

STATE OF CALIFORNIA  
California Law Revision Commission

TENTATIVE RECOMMENDATION

relating to

NONPROBATE TRANSFER TO A TRUSTEE  
NAMED IN DECEDENT'S WILL

September 1991

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Comments sent to the Commission will be a public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation it plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN October 18, 1991.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION  
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TENTATIVE RECOMMENDATION  
relating to  
NONPROBATE TRANSFER TO A TRUSTEE  
NAMED IN DECEDENT'S WILL

In 1970, the Legislature enacted provisions to permit insurance and employee benefits to be paid at death directly to a trustee named or to be named in the will of the policyholder or employee without going through probate.<sup>1</sup> Before then, there was some question whether the insurance proceeds or employee benefits had to go through probate.<sup>2</sup>

These provisions would be more useful if they were broadened to cover all types of nonprobate transfers made to a trust named or to be named in a will. The Commission is informed that nonprobate transfers at death, such as multiple-party bank accounts, are often made to an existing inter vivos trust. Since the trust is already in existence, there is no need for a will to establish the trust or to name a

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1. 1970 Cal. Stat. ch. 835 (originally enacted as Prob. Code §§ 175-184, now codified as Prob. Code §§ 6320-6330). Although the insurance proceeds and employee benefits do not go through probate, the will itself must be admitted to probate. Prob. Code § 6323. The court in which the decedent's estate is being administered may determine the validity and terms of the trust and supervise its administration. Prob. Code § 6325.

For the beneficiary designation to be valid, it must be made in accordance with the provisions of the insurance contract or employee benefit plan or, in the absence of such provisions, as approved by the insurer or administrator of the plan. Prob. Code § 6321. The designation is ineffective unless the designator's will contains provisions creating the trust, or makes a disposition valid under the California Uniform Testamentary Additions to Trusts Act. Prob. Code § 6322. Failure to satisfy these requirements does not invalidate an otherwise valid trust created in the will. The consequence of failure to satisfy these requirements is that the benefits may have to go through probate. See *Review of Selected 1970 California Legislation*, 2 Pac. L.J. 275, 292 (1971).

2. See *Review of Selected 1970 California Legislation*, 2 Pac. L.J. 275, 292 (1971).

trustee, and the property passes directly to the trust without going through probate.

But if the designated beneficiary is a trustee named or to be named in a will and the designation is made in a type of nonprobate transfer not now covered by the statute, the proceeds or benefits may have to go through probate. One of the main reasons for a nonprobate transfer is to avoid probate. Although the will itself must be admitted to probate to establish its validity and to construe its terms,<sup>3</sup> there is no need for the proceeds or benefits to pass through probate simply because they are in a bank account, and are not insurance proceeds or employee benefits.

The Commission recommends that the existing provisions for insurance and employee benefits be expanded to apply to all types of nonprobate transfers where the designated death beneficiary is a trustee named or to be named in the will.

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3. See Prob. Code § 6323.

## PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following amendments:

### Heading to Chapter 8 (commencing with Section 6320) of Part 1 of Division 6 of the Probate Code (amended)

#### CHAPTER 8. ~~TRUST-FOR-INSURANCE-OR-EMPLOYEE-BENEFITS~~ NONPROBATE TRANSFER TO TRUSTEE NAMED IN DECEDENT'S WILL

#### Prob. Code § 6320 (amended). Definitions

6320. As used in this chapter, unless the context otherwise requires:

(a) ~~"Contract or plan" means any~~ "Instrument" includes all of the following:

(1) An insurance, annuity, or endowment contract (including any agreement issued or entered into by the insurer in connection therewith, supplemental thereto, or in settlement thereof).

(2) A pension, retirement benefit, death benefit, stock bonus, profit-sharing or employees' saving plan, or contract created or entered into by an employer for the benefit of some or all of his or her employees.

(3) Self-employed retirement plans, and individual annuities or accounts, established or held pursuant to the Internal Revenue Code as now or hereafter amended.

(4) A multiple-party account as defined in Section 5132.

(5) Any other written instrument described in Section 5000.

(b) "Designation" means a designation made pursuant to Section 6321.

Comment. Subdivision (a) of Section 6320 is amended to define "instrument" as used in Section 6321. Formerly, Section 6321 referred to a "contract or plan" which was defined in Section 6320.

The basic definition of "instrument" is in Section 45. The definition of "instrument" in Section 6320 makes clear the scope and application of this chapter.

#### Prob. Code § 6321 (amended). Designation of trustee as beneficiary, payee, or owner

6321. ~~A contract or plan~~ An instrument may designate as a primary or contingent beneficiary, payee, or owner a trustee named or to be

named in the will of the person entitled to designate the beneficiary, payee, or owner. The designation shall be made in accordance with the provisions of the ~~contract or plan~~ instrument or, in the absence of such provisions, in a manner approved by the insurer if an insurance, annuity, or endowment contract is involved, and by the trustee, custodian, or person or entity administering the ~~contract or plan~~ instrument, if any. The designation may be made before or after the execution of the designator's will and is not required to comply with the formalities for execution of a will.

Comment. Section 6321 is amended to use the term "instrument" in place of the former term "contract or plan." "Instrument" is defined in Section 6320. This amendment broadens the application of this chapter to all kinds of nonprobate transfers permitted under California law, including multiple-party accounts in financial institutions, public employees' death benefits (Gov't Code §§ 21332-21335), and beneficiary designations made under Section 5000.

Before benefits or rights are transferred to the trustee named in decedent's will, the will must be admitted to probate. See Section 6323.